IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 343 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASAN IBRAHIM GHACHI

Versus

WIDOW OF DECD. CHOTARAM CHHANGUMAL

Appearance:

1. Civil Revision Application No. 343 of 2003

MR HASHIM QURESHI for Petitioner No. 1

MR DAKSHESH MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/09/2004

ORAL JUDGEMENT

Rule. Mr.Dakshesh Mehta, learned advocate waives service of notice of rule.

2. With the consent of the parties, this matter has been taken up for final hearing.

3. By filing this Civil Revision Application, the petitioner herein, has challenged the order passed by the Assistant Judge, Veraval dtd.10th April, 2003 by which the learned Judge has rejected the Civil Misc.Application No.12 of 2003 preferred by the petitioner herein, for condonation of delay caused in preferring appeal against the final judgement and decree dtd.31/3/2001 passed by the competent court in Regular Civil Suit No.17 of 1993.

4. Mr.Qureshi, learned advocate for the petitioner has submitted that earlier the judgement and decree passed in the suit was challenged before this Court, but since the appeal was maintainable before the District Court, the proceedigns initiated before this Court was withdrawn with a view to file appropriate proceedings before the District Court and there is a delay in filing the appeal before the District Court and the District Court has rejected the application for condonation of delay. He has further submitted that the lower appellate court has rejected the application for condonation of delay on technical ground without considering the appeal on merits and hence, the impugned order is required to be quashed and set aside.

5. On the other hand, Mr.Dakshesh Mehta, learned counsel for the respondent has argued that the petitioner has not given proper explanation for delay before the lower appellate court. However, he has stated that he has no objection if the delay is condoned. He, however, requested that appropriate cost may be awarded to the respondent.

6. Considering the fact that the the opponent has no objection if the delay caused in preferring appeal before the District Court, is condoned, this petition is allowed. The order dtd.10/4/2004 passed by the Assistant Judge, Veraval in Civil Misc.Application No.12 of 2003 is accordingly quashed and set aside. The delay caused in preferring the appeal before the District Court is accordingly condoned. The petitioner is directed to deposit an amount of Rs.3000/- before the District Court within two months from today. On such deposit, the opponent shall be entitled to withdraw said amount unconditionally. Mr.Qureshi, learned advocate for the petitioner has assured that the petitioner shall deposit the amount within stipulated time.

7. The Registrar of the District Court is directed

to give proper number to the appeal and thereafter the the same be heard on merits. If any application is preferred for interim relief before the District Court, such application shall be decided on its own merits in accordance with law.

8. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR,J.)

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